



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 19, 1996

Mr. Scott A. Durfee
General Counsel
Office of the District Attorney
Harris County
201 Fannin, Suite 200
Houston, Texas 77002-1901

OR96-1184

Dear Mr. Durfee:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 100450.

The Harris County District Attorney (the "district attorney") received a request for the following documents relating to former employee Shane Peter Phelps from 1987 to 1993:

1. Any document or list which provides information on cases worked;
2. Appropriate closed case files with relevant settlement or judgment information;
3. Billing records or timesheets;
4. Travel records and expense reimbursements;
5. Correspondence to and from;
6. Phone records;
7. Available personnel information;
8. Etc.

You state that the district attorney will release a list of cases in which Mr. Phelps submitted a "trial report," Mr. Phelps' "201" file and employee compensation file, with the exception of his fingerprint card. You claim that the fingerprint card is excepted from disclosure by privacy under section 552.101 of the Government Code.

You state that all timesheets older than five years have been destroyed.¹ You further state that there are no travel records or expense reimbursements or phone records pertaining to Mr. Phelps. We note that a governmental body is not required to obtain information not in its possession or to take affirmative steps to create new information. Open Records Decision Nos. 558 (1990), 534 (1989). The district attorney need not comply with this request with regard to these categories of information.

Regarding category 5, you claim that "the requestor must revise his request for specific correspondence from specific case files, citing the cause number and court for correspondence pertains to, in order for the district attorney to reasonably answer the request for information." Similarly, regarding category 2, you claim that Mr. Phelps worked on hundreds of cases and that, accordingly, the request is too broad for response. You also claim that the closed files of the district attorney are excepted from disclosure under sections 552.101, 552.103, 552.107, and 552.108.

Numerous opinions of this office have addressed situations in which a governmental body has received either an "overbroad" written request for information or a written request for information that the governmental body is unable to identify. Open Records Decision No. 561 (1990) at 8-9 states:

We have stated that a governmental body must make a good faith effort to relate a request to information held by it. Open Records Decision No. 87 (1975). It is nevertheless proper for a governmental body to require a requestor to identify the records sought. Open Records Decision Nos. 304 (1982); 23 (1974). For example, where governmental bodies have been presented with broad requests for information rather than specific records we have stated that the governmental body may advise the requestor of the types of information available so that he may properly narrow his request. Open Records Decision No. 31 (1974).

In response to the request at issue here, the district attorney must make a good-faith effort to relate the request to information in the district attorney's possession and must help the requestor to clarify his request by advising him of the types of information available. We note that if a request for information is unclear, a governmental body may ask the requestor to clarify the request. Gov't Code § 552.222(b)); *see also* Open Records Decision No. 561 (1990) at 8.

Section 552.108 excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime," and "[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution." Gov't Code § 552.108; *see Holmes v. Morales*, 39 Tex. Sup. Ct. J. 781, 1996 WL 325601 (June

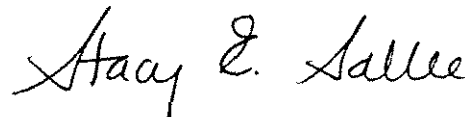
¹We assume that the district attorney either has released or will release the timesheets he has, as no exception to disclosure is claimed for those timesheets.

14, 1996). We note, however, that information normally found on the front page of an offense report is generally considered public.² *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976). We conclude that, except for front page offense report information, section 552.108 of the Government Code excepts the closed files from required public disclosure. On the other hand, you may choose to release all or part of the information that is not otherwise confidential by law. Gov't Code § 552.007.

You claim that the former prosecutor's fingerprints are protected by privacy. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses common-law privacy and excepts from disclosure private facts about an individual. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Therefore, information may be withheld from the public when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *Id.* at 685; Open Records Decision No. 611 (1992) at 1. You cite no authority for your contention that fingerprints are "highly intimate or embarrassing," nor do we believe this to be the case. Therefore, we conclude that the submitted fingerprints are not excepted from required public disclosure under the doctrine of common-law privacy.³

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Stacy E. Sallee
Assistant Attorney General
Open Records Division

SES/ch

Ref.: ID# 100450

²The content of the information determines whether it must be released in compliance with *Houston Chronicle*, not its literal location on the first page of an offense report. Open Records Decision No. 127 (1976) contains a summary of the types of information deemed public by *Houston Chronicle*.

³We note that the scope of constitutional privacy is narrower than that of common-law privacy. Accordingly, the fingerprints are not protected from disclosure under constitutional privacy.

Enclosures: Submitted documents

cc: Mr. Patrick L. Woodson
5112 Avenue G
Austin, Texas 78751
(w/o enclosures)